

By: Geren, Johnson of Dallas, Howard,
King of Parker, Davis of Harris, et al.

H.B. No. 500

Substitute the following for H.B. No. 500:

By: Davis of Harris

C.S.H.B. No. 500

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the effect of certain felony convictions of public
3 elected officers.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Article 42.01, Code of Criminal Procedure, is
6 amended by adding Section 12 to read as follows:

7 Sec. 12. In addition to the information described by
8 Section 1, the judgment should reflect affirmative findings entered
9 pursuant to Article 42.0196.

10 SECTION 2. Chapter 42, Code of Criminal Procedure, is
11 amended by adding Article 42.0196 to read as follows:

12 Art. 42.0196. FINDING REGARDING OFFENSE RELATED TO
13 PERFORMANCE OF PUBLIC SERVICE. (a) In the trial of an offense
14 described by Section 810.002, Government Code, the judge shall make
15 an affirmative finding of fact and enter the affirmative finding in
16 the judgment in the case if the judge determines that the defendant
17 is:

18 (1) a member of the elected class described by Section
19 810.002(b)(1), Government Code, while a member of the Employees
20 Retirement System of Texas; or

21 (2) a holder of an elected office for which the
22 defendant wholly or partly became eligible for membership in a
23 public retirement system.

24 (b) A judge who makes the affirmative finding described by

1 this article shall make the determination and provide the notice
2 required by Section 810.002(k), Government Code.

3 SECTION 3. Chapter 810, Government Code, is amended by
4 adding Section 810.002 to read as follows:

5 Sec. 810.002. CERTAIN ELECTED OFFICIALS INELIGIBLE FOR
6 RETIREMENT ANNUITY. (a) In this section:

7 (1) "Governing body of a public retirement system" and
8 "public retirement system" have the meanings assigned by Section
9 802.001.

10 (2) "Qualifying felony" means any felony involving:

11 (A) bribery;

12 (B) the embezzlement, extortion, or other theft
13 of public money;

14 (C) perjury;

15 (D) coercion of public servant or voter;

16 (E) tampering with governmental record;

17 (F) misuse of official information;

18 (G) conspiracy or the attempt to commit any of
19 the offenses described by Paragraphs (A)-(F); or

20 (H) abuse of official capacity.

21 (b) This section applies only to a person who is:

22 (1) a member of the elected class of the Employees
23 Retirement System of Texas as described by Section 812.002(a)(1) or

24 (2); or

25 (2) otherwise eligible for membership in a public
26 retirement system wholly or partly because the person was elected
27 or appointed to an elected office.

1 (c) Except as provided by Subsection (d), a member of a
2 public retirement system is not eligible to receive a service
3 retirement annuity under the retirement system if the member is
4 convicted of a qualifying felony committed while in office and
5 arising directly from the official duties of that elected office.

6 (d) The retirement system, on receipt of notice of a
7 conviction under Subsection (e) or (k), any similar notice of a
8 conviction of a qualifying felony from a United States district
9 court or United States attorney, or any other information that the
10 retirement system determines by rule is sufficient to establish a
11 conviction of a qualifying felony, shall suspend payments of a
12 service retirement annuity to a person the system determines is
13 ineligible to receive the annuity under Subsection (c). A person
14 whose conviction is overturned on appeal or who meets the
15 requirements for innocence under Section 103.001(a)(2), Civil
16 Practice and Remedies Code:

17 (1) is entitled to receive an amount equal to the
18 accrued total of payments and interest earned on the payments
19 withheld during the suspension period; and

20 (2) may resume receipt of annuity payments on payment
21 to the retirement system of an amount equal to the contributions
22 refunded to the person under Subsection (f).

23 (e) Not later than the 30th day after the conviction of a
24 person of a qualifying felony, the governmental entity to which the
25 person was elected or appointed must provide written notice of the
26 conviction to the public retirement system in which the person is
27 enrolled. The notice must comply with the administrative rules

1 adopted by the public retirement system under Subsection (m).

2 (f) A member who is ineligible to receive a service
3 retirement annuity under Subsection (c) is entitled to a refund of
4 the member's service retirement annuity contributions, including
5 interest earned on those contributions. A refund under this
6 subsection is subject to an award of all or part of the member's
7 service retirement annuity contributions to a former spouse,
8 including as a just and right division of the contributions on
9 divorce, payment of child support, or payment of spousal
10 maintenance or contractual alimony.

11 (g) Benefits payable to an alternate payee under Chapter 804
12 who is recognized by a qualified domestic relations order
13 established before the effective date of this subsection are not
14 affected by a member's ineligibility to receive a service
15 retirement annuity under Subsection (c). Notwithstanding any other
16 provision of this chapter, an alternate payee to whom this
17 subsection applies may exercise any choice the member could have
18 exercised regarding the form of payment of the benefit.

19 (h) On conviction of a member for a qualifying felony:

20 (1) a court may, in the same manner as in a divorce or
21 annulment proceeding, make a just and right division of the
22 member's service retirement annuity by awarding to the member's
23 spouse all or part of the community property interest in the annuity
24 forfeited by the member; and

25 (2) a court shall, if the member's service retirement
26 annuity was partitioned or exchanged by written agreement of the
27 spouses as provided by Subchapter B, Chapter 4, Family Code, before

1 the member's commission of the offense, award the annuity forfeited
2 by the member to the member's spouse as provided in the agreement.

3 (i) The service retirement annuity awarded to the convicted
4 member's spouse under Subsection (h) is the separate property of
5 that spouse and the member's community interest in the annuity, if
6 any, is forfeited. An annuity awarded to a member's spouse under
7 this section may not be converted to community property.

8 (j) If the spouse of a member convicted of a qualifying
9 felony is convicted of the felony as a party to the offense as
10 provided by Section 7.01, Penal Code, or of another qualifying
11 offense arising out of the same criminal episode as defined by
12 Section 3.01, Penal Code, the spouse forfeits the member's service
13 retirement annuity and service retirement contributions to the same
14 extent as the member.

15 (k) A court shall notify the retirement system of the terms
16 of a conviction of a person convicted of an offense described by
17 Subsection (c).

18 (l) Ineligibility for a service retirement annuity under
19 this section does not impair a person's right to any other
20 retirement benefit for which the person is eligible.

21 (m) The governing body of a public retirement system shall
22 adopt rules and procedures to implement this section.

23 SECTION 4. Chapter 601, Government Code, is amended by
24 adding Section 601.011 to read as follows:

25 Sec. 601.011. VACANCY ON FINAL FELONY CONVICTION OF MEMBER
26 OF LEGISLATURE, GOVERNOR, OR STATE ELECTED OFFICIAL. A member of
27 the legislature, the governor, or a state elected official

1 convicted of a felony vacates the member's, governor's, or
2 official's office on the date the conviction becomes final.

3 SECTION 5. Section 810.002, Government Code, as added by
4 this Act, applies only to a member of a public retirement system who
5 holds or has held elected office and, on or after the effective date
6 of this Act, commits an offense that is a qualifying felony as
7 defined by that section. A person who commits a qualifying felony
8 before the effective date of this Act is subject to the law in
9 effect on the date the offense was committed, and the former law is
10 continued in effect for that purpose. For purposes of this section,
11 an offense was committed before the effective date of this Act if
12 any element of the offense occurred before that date.

13 SECTION 6. This Act takes effect immediately if it receives
14 a vote of two-thirds of all the members elected to each house, as
15 provided by Section 39, Article III, Texas Constitution. If this
16 Act does not receive the vote necessary for immediate effect, this
17 Act takes effect September 1, 2017.